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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CESAR B., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR B.,

Defendant and Appellant.

G036161

(Super. Ct. No. DL021044)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Joy  
Wiesenfeld Markman, Judge. Affirmed.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Scott C. Taylor, Supervising Deputy Attorney General, for Plaintiff and Respondent.

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The court found true the allegation Cesar B. resisted arrest (Pen. Code, § 148, subd. (a)(1) (section 148(a)(1))<sup>1</sup> and declared him a ward of the court (Welf. & Inst. Code, § 602). On appeal Cesar contends the police lacked reasonable suspicion to detain him and therefore the evidence was insufficient to support the finding he violated section 148(a)(1). We disagree and affirm the judgment.

## FACTS

We recite the facts in the light most favorable to the People, resolving all conflicts in favor of the court's finding Cesar resisted arrest. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303.)

At 3:20 p.m., on December 10, 2004, an elementary school custodian told the school principal that "a large group of kids" were jumping on the lunch tables. (The same group had jumped "on tables the day before" and the principal had "seen a lot of graffiti.") The principal went outside and confirmed "it was some of the same kids" as the day before; they were "mostly middle-school-age kids" and were not currently students of the elementary school. The principal phoned and asked the police to "send an officer over . . . to talk to the kids [and] make sure they knew that that wasn't

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<sup>1</sup> Section 148(a)(1) provides: "Every person who willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office . . . shall be punished . . . ."

acceptable.” She expressed her concern that children should not “abuse the facility or damage property.” She told the dispatcher there were “at least a dozen” boys, some of them members of C.L.S., Crazy Little Stoners.

Officer Richard Aquino of the Santa Ana school police received a dispatch call about a group of junior high school age juveniles jumping on the school tables. Six minutes later, in uniform and on a marked motorcycle, Aquino arrived at the front side of the school. Aquino saw a group of at least six juveniles walk from the west side of the school, the side where the tables were located, and disappear around the west wing of classrooms. A minute later, Officer Brent Wimberley arrived at the school’s back side (the north side). Momentarily after Wimberley arrived, Aquino saw approximately eight juveniles coming from the east side of the playground, “running southbound through the school towards [Aquino’s] direction.” The juveniles were older and bigger than elementary school students and did not wear the elementary school’s uniform. They ran in front of the school and down the street.

Aquino followed the group on his motorcycle, and rode up to and alongside the last two juveniles in the group (one of whom was Cesar, who lived across the street from the school). Aquino said, “Stop. I need to talk to you.” Cesar continued running; Aquino stayed beside him and “again told him to stop.” Cesar replied he did not have to talk to Aquino. The juveniles “went from running to walking.” Aquino, getting off his motorcycle and walking after them, told them to come back because he needed to talk to them. “[B]asically pleading with them,” he told them the school principal had called about a disturbance at the school and he (Aquino) needed to find out if they were involved. Cesar replied, “Fuck you, I don’t have to listen to you.” Cesar continued walking with Aquino “trying to get [him] to stop.” A group of 12 to 15 juveniles formed a semi-circle behind them. Aquino continued to say, “Stop, sit on the ground. I need to speak to you.” He “reached out and grabbed the backpack [Cesar] was wearing to stop him.” Cesar “spun around and yanked . . . his body away from [Aquino]” and pushed the

officer's arm. Aquino "continued to verbalize with him and tell him, listen, a mistake's already been made. If you haven't done anything at the school, you need to sit down and talk to me about this . . . ." Cesar continued walking. Aquino "trapped him . . . against [a] chain-link fence," blocking Cesar, but not touching him. Cesar walked in Aquino's direction and looked directly at the officer, so that Aquino felt the juvenile was going to assault him. Aquino grabbed Cesar's arm, Cesar "yanked his arm away," and Aquino radioed Wimberley for assistance.

Responding to the call, Wimberley ran across the campus onto the street and "saw a large crowd gathering in the street looking southbound down an alleyway." Wimberley ran up to Aquino, who was standing in the alleyway "toe to toe with a subject larger than him." Aquino told Wimberley that Cesar was resisting and he (Aquino) intended to arrest him. Wimberley told Cesar "to get on the ground," Cesar refused, and Wimberley "grabbed him by the shoulders." Wimberley used his weight to push Cesar to the ground. Cesar "continued to resist," laying on his stomach with his hands beneath him and attempting to stand up. The officers tried to get Cesar's arms behind his back to handcuff him, with Wimberley "on top of him" "trying to reach and grab for his arms," while Aquino on the other side "tried getting [Cesar's] left arm out." Wimberley never punched Cesar in any way. When the officers finally got Cesar's arms behind his back, they "had to use two sets of handcuffs because he was so large." The officers then "got up to protect [themselves] from the crowd that was gathering around [them]."

At the close of the People's case, Cesar moved under Welfare and Institutions Code section 701.1 to dismiss the petition, arguing Aquino unlawfully detained him. After listening to argument by all counsel, the trial court denied Cesar's motion. Later, at the close of trial, the court stated its reasons for finding the detention was lawful. The court noted: (1) the dispatch report stating that a group of middle school aged juveniles were causing a disturbance at the elementary school by jumping on lunch tables on the west side of the playground, gave Aquino enough information to pursue an

investigation, and (2) Aquino's sighting of "the first group that hid behind the corner of the building" six minutes after the dispatch call, then "the second group running," which included Cesar, and were not in school uniform, led to Aquino's belief the second group might be involved in vandalism. The court stated that Aquino, in attempting to talk to Cesar, was simply trying to find out information "based on all these suspicious circumstances."

## DISCUSSION

Cesar contends Aquino lacked reasonable suspicion to detain him and therefore the evidence was insufficient to support the court's finding he resisted and obstructed a police officer from performing his official duty.

"It is the function of this court in reviewing a criminal conviction on appeal to determine whether the record contains any substantial evidence tending to support the finding of the trier of fact, and in considering this question we must view this evidence in the light most favorable to the finding. [Citation.] The test is not whether guilt is established beyond a reasonable doubt." (*In re Roderick P.* (1972) 7 Cal.3d 801, 808.) ""[T]he appellate court can give credit only to 'substantial' evidence, i.e., evidence that reasonably inspires confidence and is 'of solid value.'"" (*Id.* at p. 809.) "[T]he same principles are applicable to a review on appeal of the sufficiency of the evidence to support a finding in a juvenile proceeding that the minor violated a criminal statute." (*Ibid.*) ""Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends."" (*People v. Lewis* (2001) 26 Cal.4th 334, 361.)

The elements of a section 148(a)(1) violation are: (1) the defendant willfully resisted or obstructed a peace officer, (2) when the officer was engaged in the

performance of official duties, and (3) the defendant knew or reasonably should have known the other person was a peace officer engaged in the performance of official duties. (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1108-1109.) “It is settled that no violation of Penal Code section 148 can result when the public officer is performing an activity which is not lawful, since an officer does not discharge a duty of his office when he engages in unlawful conduct.” (*In re Gregory S.* (1980) 112 Cal.App.3d 764, 772.) Cesar contends Aquino illegally detained him. To prove the detention was lawful, the People were required to show that when the detention occurred, specific and articulable facts existed which would have caused a reasonable officer “to believe that (1) some activity out of the ordinary had taken place or was occurring or about to occur; (2) the activity was related to crime; and (3) the individual under suspicion was connected to the activity.” (*People v. Bower* (1979) 24 Cal.3d 638, 644 [superseded on other grounds by constitutional amendment as recognized in *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733].)<sup>2</sup>

Focusing on the third prong of this test, Cesar argues the evidence was insufficient to prove he was connected to the table jumping activity reported by the school principal. The record, however, discloses specific and articulable facts which would have caused a reasonable officer to believe Cesar was indeed connected. The school principal reported to the police that at least a dozen boys, mostly middle school aged, had jumped on the lunch tables. Six minutes later, Officer Aquino saw a group of juveniles walk from the side of the school where the tables were located and disappear behind a building. A minute later, Officer Wimberley arrived at the school’s north side. Aquino then observed some juveniles running southbound through the school. The

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<sup>2</sup> Post-Proposition 8, “the prosecution no longer has the burden of showing a police officer *actually* suspected the individual detained was involved in criminal activity. Rather, the focus is on whether the officer’s conduct was objectively reasonable.” (*People v. Lloyd, supra*, 4 Cal.App.4th at p. 733, fn. omitted.)

juveniles appeared to be older than elementary school students and did not wear the school uniform.

Cesar argues the evidence did not point to his “individual culpability.” He notes that the principal “gave no specific descriptions of clothing, facial features or ethnicity” and that Aquino picked Cesar from the group because Cesar was closest to the officer. He contends the facts must “‘distinguish [the suspected individual] from any other citizen . . . at that time and place.’” (*People v. Bower, supra*, 24 Cal.3d at p. 644.) But here the facts distinguished a *group of youths* at that place and time. The youths were boys of middle school age observed running near the site of acts of possible vandalism, within minutes of those acts. Aquino had reasonable suspicion to detain any individual in that group.

Cesar contends that when “Aquino appeared on the scene, many innocent youths were on their way home from school [and] may have passed near or even through the elementary school . . . .” Cesar, however, provides no supporting record reference for this assertion. Although the principal testified that 3:20 p.m. was “after school,” she did not specify at what time school actually let out nor did she state that children were walking home from school at that time. Moreover, Aquino saw the group of juveniles, including Cesar, running southbound through the campus momentarily after Wimberley’s arrival at the school’s north side. From this, Aquino could infer the youths were running away from (or did not wish to be seen by) Wimberley. Furthermore, the “possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal — to ‘enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges. . . .’” (*In re Justin B.* (1999) 69 Cal.App.4th 879, 886.)

Cesar compares the facts here to those in *In re Tony C.* (1978) 21 Cal.3d 888. There, an officer on vehicle patrol detained two black youths he saw walking on a public residential sidewalk during school hours. (*In re Tony C.*, at p. 896.) Several burglaries had been reported in the area on the day before and “‘three male blacks’ were being sought in connection therewith.” (*Ibid.*) Our Supreme Court held, “The ensuing investigative stop was thus based entirely on a combination of hunch and curiosity” and was unlawful. (*Id.* at p. 898.) Here, in contrast, Cesar was running after school hours on the campus of a school he did not attend as a student and where possible acts of vandalism had occurred minutes earlier. The dispatch call reported that a group of middle school aged juveniles had performed the acts of vandalism; Cesar was in such a group.

#### DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O’LEARY, J.